

Proposed Regulations Providing for Transportation Of Patients in Facilities

104 CMR 27.08 is stricken and replaced with the following:

27.08 Transfer and Transport of Patients

- (1) 104 CMR 27.08 governs the transfer of patients pursuant to M.G.L. c. 123, § 3 and the transport of persons pursuant to M.G.L. c. 123, § 21.
- (2) For the purposes of 104 CMR 27.08(3) to (8), "emergency" shall mean those medical, surgical and psychiatric crises which in the opinion of the facility director threaten the safety, health or life of the patient or others, and which could not be appropriately treated in the transferring facility.
- (3) Permitted Transfers; Exceptions. Any person admitted to a facility may be transferred from that facility to any other facility, provided that except in an emergency:
 - (a) Patients on voluntary admission status under 104 CMR 27.06 shall not be subject to transfer without their written consent; and
 - (b) Patients on conditional voluntary admission status under 104 CMR 27.06 may refuse transfer. Such refusal may be considered equivalent to submission of the patient's three day written notice of his or her intention to leave or withdraw from the facility. Upon such refusal, the facility director may:
 1. File a petition for commitment under the provisions of M.G.L. c. 123, §§ 7 and 8 if the person meets the criteria for commitment; or,
 2. Withdraw the notice of transfer provided to the person pursuant to 104 CMR 27.08(8).
- (4) Absent an emergency, and except for a patient under the age of 16 or under a guardianship with authority to admit to a psychiatric facility, a patient on conditional voluntary admission status at a facility may not be transferred from that facility against his or her will unless a court of competent jurisdiction enters a commitment order pursuant to M.G.L. c. 123, §§ 7 and 8.
- (5) Absent an emergency, a patient under the age of 16 or under a guardianship with authority to admit to a psychiatric facility, who has been admitted to a facility pursuant to his or her legally authorized representative's authority, may not be transferred from that facility over the objection of the legally authorized representative unless a court of competent jurisdiction enters a commitment order pursuant to M.G.L. c. 123, §§ 7 and 8.
- (6) In no event shall an order of commitment for observation pursuant to M.G.L. c. 123, § 12 be issued in order to transfer a patient in lieu of compliance with the requirements of M.G.L. c. 123, § 3 or 104 CMR 27.08.
- (7) Transfer of a patient committed pursuant to M.G.L. c. 123, § 12 shall not extend the period of such hospitalization.
- (8) Transfer Procedures.

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- (a) The approval of the director of the receiving facility shall be obtained by the transferring facility.
 - (b) The director of the transferring facility shall give six days written notice to the patient to be transferred and to his or her nearest relative, unless the patient knowingly objects, or his or her legally authorized representative; provided, however, that if such transfer must be made immediately because of an emergency, notice shall be given within 24 hours after the transfer pursuant to M.G.L. c. 123, § 3. The notice shall be provided in a form prescribed by the Commissioner.
 - (c) A patient, legally authorized representative of a patient under the age of 18, or duly appointed guardian with authority to admit the ward to a psychiatric facility may, but shall not be required to, waive the six days notice requirement.
 - (d) A copy of the Notice of Transfer, along with a copy of the patient's underlying admission status documentation, shall accompany the patient to the receiving facility, and the underlying status shall remain valid upon admission to the receiving facility.
- (9) Transport of Persons Admitted to a Facility; Limitations of Use of Restraint
- (a) The transport with restraint of a person in a facility by or under the supervision of the facility's staff may be authorized by a physician authorized to order restraint pursuant to 104 CMR 27.12(5)(a)1, or in an emergency when an authorized physician is not available, by a staff person authorized to initiate restraint pursuant to 104 CMR 27.12(5)(a)2, on a form approved by the Department, for the following purposes:
 - 1. Transfer to another facility pursuant to M.G.L. c. 123, § 3;
 - 2. Movement among separate campuses of a single facility;
 - 3. Evaluation and/or treatment at a medical facility or office and return to the facility;
 - 4. Attendance at court proceedings and return to the facility;
 - 5. Transfer to or from another state pursuant to the Interstate Compact on Mental Health, M.G.L. c. 123 App. §§ 1-1 through 1-4;
 - 6. Other destinations with the approval of the facility director or designee.
 - (b) Restraint may not be used in the course of transport unless such restraint is necessary for the safety of the person being transported or of others who are likely to come into contact with him or her, and in any case such restraint must be by the least restrictive method to assure the safety of the person or others in accordance with 104 CMR 27.08(9).
 - 1. If the person is being transported by the facility, or under the supervision of the facility's staff, then the physician's authorization shall describe the circumstances under which restraint may be used in the course of transport and method of restraint that may be employed.
 - a. No locked mechanical restraint devices requiring the use of a key for their release may be used in the course of transport.
 - b. Only restraint procedures or devices that have been approved by the facility for such purposes may be used for restraint during transport, and

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monitoring staff must have received appropriate training on such approved procedures and devices.

c. No person shall be placed in restraints in the course of transport unless a staff member is assigned to provide one-to-one monitoring as provided in 104 CMR 27.12(5)(h)1-6.

d. During the transport, the monitoring staff person must carry a copy of the form which authorizes the restraint during transport.

e. The driver of the vehicle in which the person is being transported may not be assigned to provide such monitoring.

f. No staff member who has not been trained in accordance with 104 CMR 27.12(2) may be authorized to apply restraints to a person in the course of transport, or to monitor a person who is in restraints in the course of transport.

g. Except as provided in 104 CMR 27.08(9)(c) and (d), restraint ordered pursuant to 104 CMR 27.08(9) may only last while the person is under the supervision of facility staff, and shall terminate if the person is admitted to a medical facility, including the emergency department of such medical facility for evaluation or treatment.

(c) If the person is being transported by ambulance, then restraint may be used only in accordance with M.G.L. c. 111C, § 18.

(d) Nothing in 104 CMR 27.08(9) shall be deemed to regulate the use of restraint by licensed law enforcement personnel in the transport of persons in the custody of such personnel.

(e) The use of seatbelts or a "child safety door lock" shall not be considered restraint for purposes of 104 CMR 28.08(9).

(f) Where the need for restraint during transport for purposes described in 104 CMR 27.08(9)(a) is anticipated, consideration should be given to delaying such transport until such person no longer requires restraint, if such delay is reasonable.